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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

HILDA BONILLA,

Plaintiff and Respondent,

v.

JENNY AGUILAR et al.,

Defendants and Appellants.

E068892

(Super.Ct.No. RIC1511806)

OPINION

APPEAL from the Superior Court of Riverside County. Gloria C. Trask, Judge.

Affirmed.

Law Offices of Zulu Ali and Zulu A. Ali, for Defendants and Appellants.

No appearance for Plaintiff and Respondent.

## I.

### INTRODUCTION

Defendants and appellants, Jenny Aguilar and Antonio Aguilar Gamino (Aguilars), appeal the judgment entered in favor of plaintiff and respondent, Hilda Bonilla, after a court trial resolved their dispute about a residential property. The trial court awarded Bonilla \$65,000 for her cash contribution to the property purchase, and 61.60 percent equity, less \$65,000 for Bonilla's cash investment, as well as existing mortgages and statutory liens from the sale of the property.

The Aguilars contend on appeal that the trial court's damages calculation was erroneous. The Aguilars also argue the trial court erred because they were entitled to an \$8,700 setoff under the parties' agreement. We conclude that the trial court's judgment of damages is supported by substantial evidence. We further find no errors by the trial court and affirm the judgment.

## II.

### PROCEDURAL BACKGROUND<sup>1</sup>

The underlying facts are not in dispute. This case involves an equity share agreement and real property transfer among family members. Bonilla is the mother of Jenny Aguilar. Antonio Aguilar Gamino is married to Jenny Aguilar. The Aguilars subsequently applied for and qualified for the loan.

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<sup>1</sup> The procedural background is from the clerk's transcript.

*A. The Loan and Real Property Transfer*

In August 1995, Bonilla initially purchased the subject property as her residence, in joint tenancy with two other individuals, Ramon Benavides and Margarita Perez, in Corona. In August 1997, Perez quitclaimed her property interest to Bonilla and Benavides. In October 2013, Benavides filed a partition action (Riverside Superior Court case No. RIC1311808). Bonilla subsequently settled the case by offering to purchase Benavides's interest in the property. However, in order to buy out Benavides's interest, Bonilla needed to qualify for a new loan, but was unable to do so.

When Bonilla bought out Benavides's interest, there was an existing mortgage against the property for \$43,842.59. The property's initial sales price was \$280,000. The Aguilar family qualified for the property's new loan in the amount of \$215,000, while Bonilla contributed \$65,000 in cash to buy out Benavides's interest. The Aguilar family executed a new grant deed in May 2015 for the sole purpose of obtaining the property's loan, but did not contribute cash towards the sale or the loan.

On May 16, 2015, the Aguilar family and Bonilla contractually agreed that the property value of \$280,000 was attributed to their equity share agreement. The parties also agreed Bonilla's equity share was 61.60 percent and the Aguilar family's share was 38.40 percent. The property's monthly mortgage was \$1,525 and was apportioned 50/50 between the parties. At the time, the Aguilar family and their two children moved into the residence with Bonilla. The Aguilar family agreed to pay 60 percent of the mortgage as rent and Bonilla agreed to pay 40 percent as rent. On that same day, the equity share agreement was executed, the

Aguilars also signed a quitclaim deed, quitclaiming a 60 percent property interest back to Bonilla but the deed was not recorded. The Aguilars and Bonilla have resided together in the residence since May 2015.

In July 2015, Bonilla discovered that her son-in-law had listed the residence for sale for \$280,000 without her knowledge or permission. Bonilla also executed a grant deed dated July 1, 2015, describing the parties' contractual equity share interest, but the Aguilars did not sign or record the grant deed.

By August 10, 2015, the parties could not resolve their dispute about the property deeds. Bonilla retained counsel, who attempted to obtain the Aguilars' compliance with the terms of the parties' equity share contract. Bonilla filed suit against the Aguilars after informal attempts to resolve the parties' dispute were unsuccessful.

#### *B. The Court Proceedings*

Bonilla's suit alleged causes of action for (1) fraud, (2) quiet title, (3) breach of contract, (4) breach of covenant of good faith and fair dealing, (5) declaratory relief, and (6) constructive trust. The Aguilars filed answers to the complaint. On October 17, 2016, a court trial commenced. After the court heard evidence, the parties entered into a stipulated judgment to resolve the case. The case was dismissed with prejudice.

In December 2016, Bonilla discovered that her "attorney," who had represented her at the court trial and had advised her to enter into a stipulated judgment, had assumed another attorney's identity and state bar number. Bonilla's new counsel filed a motion for relief from the stipulated judgment, which the court granted.

A second court trial was then set for May 2017. Bonilla filed a trial brief stating she had not paid her full share of the mortgage payment and owed \$8,700 through May 2017. Bonilla also acknowledged that up until May 2017, the Aguilars had paid \$51,624.92 on the mortgage loan. Nonetheless, Bonilla claimed the Aguilars were not entitled to setoff for Bonilla's loan underpayment because Bonilla was one of five people living at the residence.

At the time of the second court trial, the property was in escrow. Bonilla contended the property was worth \$370,340 based on a "Zillow" estimate that she produced as evidence of the property's value. Bonilla requested a \$101,792 judgment, based on the property's present value, rounded up to \$371,000. The \$101,792 amount was arrived at by accepting the estimate and subtracting the outstanding \$215,000 loan, and an estimated \$29,680 cost of sale, which left \$126,320 equity in the property. After subtracting Bonilla's \$65,000 cash contribution, Bonilla suggested the remaining \$61,320 would be subject to a 60/40 split pursuant to the parties' contract. This meant Bonilla would receive \$36,792, in addition to her \$65,000 contribution, while the Aguilars would receive \$24,528.

The second court trial was held on May 16, 2017. Prior to trial, the court considered the parties' pleadings, the trial brief, and a joint pretrial statement. The Aguilars appeared in propria persona and presented evidence at trial. After hearing testimony and considering evidence, the trial court ruled in Bonilla's favor. The court

found that Bonilla was entitled to \$65,000 for her cash investment and 61.60 percent of the net sale proceeds for her equity portion when the property was sold.

On June 28, 2017, the trial court entered judgment in Bonilla's favor for \$65,000 for her cash contribution to the property, plus a 61.60 percent equity interest in the proceeds after the property sold and existing mortgage and liens were paid. The Aguilar's filed a notice of appeal on August 7, 2017.

### III.

#### DISCUSSION

##### *A. Substantial Evidence Supports the Judgment*

The Aguilar's argue the damages awarded by the trial court were speculative and that the trial court should have only awarded Bonilla 61.60 percent of \$115,000 (the difference between the property sale of \$330,000 and the loan amount of \$215,000), amounting to \$70,000. We disagree that the trial court applied an erroneous measure of damages or that the amount awarded to Bonilla was speculative.

The Aguilar's have erroneously relied on Civil Code section 3306 rather than Civil Code section 3300 to address the measure of damages. At trial, Bonilla sought damages and declaratory relief under a breach of contract claim, which requires that we consider whether the damages awarded in this case were appropriate under Civil Code section 3300. Civil Code section 3300 provides: "For the breach of an obligation arising from contract, the measure of damages . . . is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby. . . ."

Under general contract principles, when one party breaches the contract the other party is “entitled to damages sufficient to make that party ‘whole,’ that is, enough to place the nonbreaching party in the same position as if the breach had not occurred.” (*Postal Instant Press, Inc. v. Sealy* (1996) 43 Cal.App.4th 1704, 1708-1709.) Contract damages therefore seek to approximate the agreed-upon performance. (*Applied Equipment Corp. v. Litton Saudi Arabia, Ltd.* (1994) 7 Cal.4th 503, 515.)

We review questions relating to breach of contract and whether contract damages are foreseeable under the substantial evidence standard of review. (*Ash v. North American Title Co.* (2014) 223 Cal.App.4th 1258, 1268.) Substantial evidence requires substantial proof. (*Ibid.*) “We view the evidence in the light most favorable to the prevailing party and draw all reasonable inferences and resolve all conflicts in its favor.” (*Ibid.*)

Contract damages are generally limited to those within the contemplation of the parties when the contract was entered into or reasonably foreseeable by them, while consequential damages beyond the expectations of the parties are not recoverable. (*Ash v. North American Title Co., supra*, 223 Cal.App.4th at p. 1268.) The nonbreaching party is entitled to damages equivalent to the benefit of the contractual bargain. (*Lewis Jorge Construction Management, Inc. v. Pomona Unified School Dist.* (2004) 34 Cal.4th 960, 967-968.) For this reason, foreseeability has an objective character, ““it is foreseeability only by the party in breach that is determinative”” and ““the loss need only have been foreseeable as a probable, as opposed to a necessary or certain, result of the breach.””

(*Ash, supra*, at p. 1270.) “An award of damages computed on a reasonable basis will be upheld even if it is only an approximation.” (*Scheenstra v. California Dairies, Inc.* (2013) 213 Cal.App.4th 370, 402.)

We find that substantial evidence supports the judgment. On May 15, 2016, the parties agreed to share the property’s equity on a 60/40 basis, and mutually agreed to set the value at \$280,000. Given the fact that the Aguilar’s breached the contract shortly after the agreement was executed, and Bonilla was the aggrieved party, compensation for Bonilla’s \$65,000 cash payment for the purchase of Benavides’s property interest was reasonably foreseeable, along with the parties’ agreed-to equity split.

The court’s judgment was not beyond the expectation of the parties. The parties mutually agreed to the \$280,000 property value, not \$215,000, as the Aguilar’s argue on appeal. Contrary to the Aguilar’s argument, the fact that the trial court did not state an exact dollar amount for the sale of the property did not make the court’s award speculative. The damages were certain because the court’s award in Bonilla’s favor was computed on a reasonable basis—the actual sales price of the property. Damages need to be certain but not with ““mathematical precision.”” (*Scheenstra v. California Dairies, Inc., supra*, 213 Cal.App.4th at p. 405.) Here, the sales proceeds from the escrow provides a certain reasonable basis for the parties’ 60/40 split.

Moreover, to calculate the parties’ equitable interests based solely on the difference between the \$215,000 loan and the property’s actual sales price, as the Aguilar’s now suggest, would unjustly enrich the Aguilar’s for their breach of contract and



would not compensate Bonilla for the detriment caused or the \$65,000 she contributed to the purchase of the property. Accordingly, we find no error.

*B. The Trial Court Did Not Abuse Its Discretion in Crediting Setoff*

The Aguilaras further claim they are entitled to \$8,700 as a credit to setoff Bonilla's share of mortgage payments that she did not pay as required under the contract provision. We reject the Aguilaras' contention that the trial court abused its discretion by not crediting a setoff.

A setoff is new matter that must be affirmatively pleaded. (*Title Ins. Co. v. State Bd. of Equalization* (1992) 4 Cal.4th 715, 731; e.g., *Fassberg Const. Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 762-763.) The right to setoff is based on the equitable principle that either party to a transaction involving mutual debts and credits can strike a balance, holding himself owing or entitled only to the net difference. (*Fassberg Const. Co., supra*, at p. 762.)

"Whether a setoff is appropriate in equity is a question within the trial court's discretion. We review the court's decision under the abuse of discretion standard. [Citation.] An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice." (*Fassberg Const. Co. v. Housing Authority of City of Los Angeles, supra*, 152 Cal.App.4th at pp. 762-763.)

The Aguilaras pleaded an eleventh affirmative defense alleging Bonilla owed setoff amounts but did not state an amount in their answer to Bonilla's complaint. Bonilla

however, acknowledged that she had underpaid the property's mortgage in the amount of \$8,700. The court considered the Aguilar's argument that they had been paying the mortgage on the property, but rejected a setoff credit because Bonilla had owned the property for a significant period of time and had been paying the mortgage for several years. Consequently, based on the court's rationale, we conclude that the trial court did not abuse its discretion by not awarding a setoff credit because the court made an equitable determination and rejected the Aguilar's setoff request.

#### IV.

#### DISPOSITION

The judgment is affirmed. Bonilla is awarded her costs on appeal.

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CODRINGTON  
Acting P. J.

We concur:

SLOUGH  
J.

RAPHAEL  
J.